

Law Office of Nora J. Chorover

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December 3, 2015

BY CERTIFIED MAIL

David A. Willson, President
R. H. Willson, Inc.
44 North Street
Pepperell, MA 01463
Certified Mail #: 7014 3490 0000 7429 8473

Roberta Willson, Registered Agent
R. H. Willson, Inc.
44 North Street
Pepperell, MA 01463
Certified Mail #: 7014 3490 0000 7429 8480

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance
with Federal Clean Water Act's Industrial Stormwater Discharge Requirements:
44 North Street, Pepperell, Massachusetts

Dear Mr. Willson and Ms. Willson,

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act (the "Act") against R. H. Willson, Inc. ("R.H. Willson"). The subject of the action will be R.H. Willson's unlawful discharge of stormwater from its automobile salvage yard at 44 North Street, Pepperell, Massachusetts (the "Facility"). Stormwater from the Facility discharges off the site to wetlands that are connected to the Nissitissit River. For many years, R.H. Willson has operated this Facility without obtaining coverage under EPA's Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "Permit") and without complying with the Permit's terms.

BACKGROUND

Activities that take place at industrial facilities, such as automobile salvage yards, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface waters. Stormwater pollution is a significant source of water quality problems for the nation's waters.

The following are *some* of the activities, pollutant sources and pollutants that may be present with R.H. Willson's automobile salvage yard processes:

Activity	Pollutant Source	Pollutant
Vehicle Dismantling	Oil, anti-freeze, batteries, gasoline, diesel fuel, hydraulic fluids, electrical switches	Oil and Grease, ethylene glycol, heavy metals, mercury
Used Parts Storage	Batteries, chrome bumpers, wheel balance, weights, tires, rims, filters, radiators, catalytic converters, engine blocks, hub caps, doors, drivelines, galvanized metals, mufflers	Sulfuric acid, galvanized metals, oil and grease, heavy metals, petroleum hydrocarbons, total suspended solids (TSS)
Outdoor Vehicle and Equipment Storage	Leaking engines, chipping/corroding bumpers, chipping paint, galvanized metal	Oil and grease, arsenic, organics, heavy metals, total suspended solids (TSS)
Vehicle and Equipment Maintenance	Parts cleaning	Chlorinated solvents, oil and grease, heavy metals, acid//alkaline wastes
	Waste disposal of greasy rags, oil filters, air filters, batteries, hydraulic fluids, transmission fluids, radiator fluids, degreasers	Oil, heavy metals, chlorinated solvents, acid/alkaline wastes, oil, heavy metals, chlorinated solvents, acid/alkaline wastes, ethylene glycol
	Spills of oil, degreasers, hydraulic fluids, transmission fluid, and radiator fluids	Oil, arsenic, heavy metals, organics, chlorinated solvents, ethylene glycol
	Fluids replacement, including oil, hydraulic fluids, transmission fluid, and radiator fluids	Oil, arsenic, heavy metals, organics, chlorinated solvents, ethylene glycol
Vehicle, Equipment, and Parts Washing Areas	Washing and stream cleaning waters	Oil and grease, detergents, heavy metals, chlorinated solvents, phosphorus, salts, suspended solids

Clean Water Action will ask the Court to ensure R.H. Willson's future compliance with the Act, assess civil penalties in an appropriate amount,¹ award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action's complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director
Clean Water Action
88 Broad Street, Lower Level
Boston, MA 02110
(617) 338-8131
(617) 335-6449 (fax)

Counsel for Clean Water Action in this case is:
Nora J. Chorover
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617-477-3550

R.H. WILLSON'S VIOLATIONS AND DATES OF VIOLATIONS

A. THE REQUIREMENTS OF THE ACT

1. Pollutant Discharges without a Permit are Illegal.

The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the federal Environmental Protection Agency ("EPA") under the National Discharge Elimination System ("NPDES").

¹ The Statute authorizes the Court to assess a penalty of *up to* \$37,500 a day for each violation. See 33 U.S.C. § 1319(d) and 78 Fed. Reg. 66647 (Nov. 6, 2013).

2. Automobile Salvage Yards Must Comply with EPA's General Industrial Stormwater Permit.

In order to minimize polluted stormwater discharges from certain categories of industrial facilities, EPA has issued a general industrial stormwater permit (the "Permit").² Automobile salvage yards are subject to the requirements of this Permit.³ Automobile salvage yards which carry on other types of activities also subject to the requirements of the Permit must also comply with any sector-specific requirements for such co-located industrial activity.⁴

3. Automobile Salvage Yards Must Develop and Implement a Stormwater Pollution Prevention Plan ("SWPPP").

An owner or operator (hereafter referred to as "operator") of a facility subject to the requirements of the Permit must prepare a SWPPP before being authorized to discharge under the Permit.⁵ The SWPPP must be "prepared in accordance with good engineering practices"⁶ and, among other things,

- identify potential sources of pollution at the facility;⁷
- describe and ensure implementation of control measures that are technologically available and economically practicable and achievable in light of best industry practice;⁸ and
- set forth specific procedures to assure compliance with effluent limitations and monitoring/inspection requirements of the Permit.⁹

4. Automobile Salvage Yards Must Submit to EPA a Notice of Intent to be covered by the Permit By EPA's Established Deadlines.

After completing and implementing its SWPPP,¹⁰ an automobile salvage yard must submit to EPA a Notice of Intent ("NOI") to be covered by the Permit. EPA's initial NOI filing

² The General Permit was first issued in 1995 and most recently reissued in June 2015 in substantially similar form. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008), and reissued in 2015 pursuant to 80 Fed. Reg. 34403 (June 4, 2015).

³ Permit, Appendix D, pg. D-3.

⁴ Permit, pg. 123.

⁵ Permit, Section 5 and Section 8.M.3.

⁶ Permit, pg. 30 (referring to "control measures").

⁷ Permit, pgs. 32-33.

⁸ Permit, pgs. 14, 33-34.

⁹ Permit, pgs. 34-36.

deadline was January 1, 1996.¹¹ When the agency reissued the Permit in 2015, it reminded operators of subject facilities that unpermitted stormwater discharges are “unauthorized,” and ordered all subject facilities to file an NOI for the 2015 permit by September 2, 2015.¹²

5. Automobile Salvage Yards Must Comply with the Terms of the Permit.

The Permit requires automobile salvage yards to, among other things:

- a. ensure that stormwater discharges meet applicable water quality standards;¹³
- b. reduce and/or eliminate pollutants to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice;¹⁴
- c. implement specific best management practices set forth in the Permit for automobile salvage yards;¹⁵
- d. monitor stormwater discharges for compliance with benchmark limitations and effluent limitations applicable to automobile salvage yards;¹⁶
- e. perform regular facility and stormwater inspections;¹⁷
- f. report on monitoring and inspections to EPA by specified deadlines;¹⁸ and
- g. comply with those permit conditions applicable to permittees in Massachusetts, including but not limited to
 - i. submission of monitoring results to the Regional Office of the Massachusetts Department of Environmental Protection (“MADEP”) for the MADEP Region in which the Facility is located, where the monitoring identifies exceedences of any effluent limits or benchmarks for which monitoring is required under the Permit,

¹⁰ Permit, pg. 30 (“You must prepare a SWPPP for your facility before submitting your Notice of Intent (NOI) for permit coverage.”).

¹¹ See 60 Fed. Reg. 50804.

¹² Permit, pg. 10 (unpermitted discharges from the facility will continue to be “unauthorized” unless allowed under the Permit). See also 40 C.F.R. §122.28(b)(2)(i) (“A discharger ... who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge”).

¹³ Permit, pg. 20 (“Your discharge must be controlled as necessary to meet applicable water quality standards.”).

¹⁴ Permit, pg. 14.

¹⁵ Permit, pg. 123.

¹⁶ Permit, pg. 124. R.H. Willson was required to monitor for Total Suspended Solids (“TSS”), aluminum, iron, and lead in compliance with benchmark limits.

¹⁷ Permit, pgs. 22-26.

¹⁸ Permit, pgs. 47-51.

- ii. where effluent limits and/or benchmarks are exceeded, submission to the MADEP Regional Office of any follow-up monitoring and a description of the corrective actions required and undertaken to meet those effluent limits and/or benchmarks, and
- iii. continued benchmark monitoring until all four of the quarterly monitoring samples meet the benchmarks rather than the average of the four.¹⁹

B. R.H. WILLSON'S VIOLATIONS AND DATES OF VIOLATIONS

Clean Water Action's complaint will address violations that occurred during the last five years.

1. Violations that Have Occurred on Specific Days During the Last Five Years:
Discharges of Stormwater from the Facility Without a NPDES permit

R.H. Willson's violations of the Act's prohibition against unpermitted discharges occurred and are continuing to occur at the Facility each time rain, snow melt or another factor results in industrial stormwater discharges from the Facility to waters of the United States. The days during the last five years on which rain, snow melt or other factors caused stormwater to be discharged from the Facility to waters of the United States are listed on Exhibit A hereto. Clean Water Action's complaint will also address any non-permitted stormwater discharge violations that occurred or occur between the last date listed on Exhibit A, and the date on which the complaint is filed.

2. Violations that Have Occurred on Each Day During the Last Five Years.²⁰

The following violations of the Act are set forth on Exhibit B. These violations have occurred on a daily basis for the last five years and they are continuing to occur.

- a. failure to prepare and implement a SWPPP;
- b. failure to submit a NOI to be covered by the Permit;
- c. failure to ensure that stormwater discharges from the Facility will not cause or have the reasonable potential to cause or contribute to a violation of water quality standards;
- d. failure to implement adequate control measures;

¹⁹ Permit, pgs. 170-171.

²⁰ Clean Water Action believes that the violations set forth in this Section B.2 have occurred on each day of the last five years, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through November 30, 2015 are set forth on Exhibit A hereto. The complaint, when filed, will set forth additional rain dates since November 30, 2015.

- e. failure to monitor for compliance with benchmark limitations;
- f. failure to report monitoring results for the Facility to EPA by the specific deadlines;
- g. failure to perform annual comprehensive site inspections, and
- h. failure to complete and submit annual reports.

To the extent that R.H. Willson is carrying out any other industrial activity at the Facility which is also subject to the requirements of the Permit, then R.H. Willson's failure to comply with the Permit requirements for such co-located activities is also a violation of the Clean Water Act.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chlorover
Attorney for
CLEAN WATER ACTION

cc: (by certified mail)

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EXHIBIT A

DAYS BETWEEN DECEMBER 3, 2010 AND NOVEMBER 30, 2015 ON WHICH STORMWATER FROM FACILITY DISCHARGED TO WATERS OF THE UNITED STATES

December 2010:	13, 27
January 2011:	12, 13, 19, 27
February 2011:	2, 3, 6, 8, 26, 27, 28
March 2011:	1, 7, 11, 12, 17, 22
April 2011:	1, 2, 5, 13, 14, 17, 20, 24, 27, 29
May 2011:	5, 8, 15, 16, 17, 18, 19, 24, 25
June 2011:	9, 12, 23, 24, 25, 26, 29
July 2011:	5, 7, 26, 30
August 2011:	7, 8, 10, 16, 26, 28, 29
September 2011:	6, 7, 8, 9, 21, 23, 24, 29, 30
October 2011:	2, 4, 5, 13, 14, 15, 20, 27, 28, 30
November 2011:	11, 17, 23, 24, 30
December 2011:	7, 8, 16, 22, 23, 28
January 2012:	12, 13, 14, 20, 22, 24, 27, 28
February 2012:	25
March 2012:	17
April 2012:	2, 13, 23, 24, 27
May 2012:	1, 2, 5, 8, 9, 10, 15, 16, 17, 22, 23, 30
June 2012:	2, 3, 4, 5, 6, 8, 9, 13, 14, 26, 30
July 2012:	4, 5, 28, 29
August 2012:	5, 6, 10, 11, 12, 13, 16, 18, 28, 29
September 2012:	19, 23, 29
October 2012:	3, 4, 5, 8, 11, 14, 15, 16, 20, 29, 30, 31
November 2012:	8, 9, 13, 14
December 2012:	8, 9, 10, 17, 18, 19, 21, 22, 27, 28, 30
January 2013:	12, 16, 17, 29, 31
February 2013:	1, 9, 12, 20, 24, 25, 27, 28
March 2013:	8, 9, 13, 19, 20
April 2013:	1, 10, 11, 13, 20
May 2013:	10, 12, 20, 22, 24, 26, 29, 30
June 2013:	3, 4, 7, 8, 11, 19, 25, 26, 28
July 2013:	2, 9, 11, 12, 23, 24, 26, 29
August 2013:	2, 10, 29, 31
September 2013:	11, 13, 22
October 2013:	5, 7, 8
November 2013:	1, 18, 23, 27, 28
December 2013:	2, 7, 10, 15, 18, 24, 30

January 2014:	2, 3, 6, 7, 12, 15, 19
February 2014:	4, 5, 6, 10, 14, 16, 19
March 2014:	13, 30, 31
April 2014:	1, 5, 8, 9, 12, 16, 27
May 2014:	1, 2, 17, 28
June 2014:	6, 26
July 2014:	3, 4, 5, 10, 16, 17, 24, 28, 29
August 2014:	2, 13, 14, 22
September 2014:	1, 7, 14, 21
October 2014:	2, 5, 12, 17, 23, 24, 30
November 2014:	2, 14, 17, 18, 24, 25
December 2014:	3, 6, 7, 10
January 2015:	4, 5, 10, 19, 25, 27, 28
February 2015:	2, 3, 5, 6, 8, 9, 10, 15, 19, 22
March 2015:	2, 4, 15, 27, 29
April 2015:	9, 10, 21
May 2015:	20, 29
June 2015:	1, 2, 3, 15, 16, 21, 22, 24, 28, 29
July 2015:	2, 8, 10, 18, 28, 31
August 2015:	5, 12
September 2015:	11, 12, 14, 30
October 2015:	1, 10, 29
November 2015:	11, 12, 13, 20

EXHIBIT B

TABLE OF R. H. WILLSON'S VIOLATIONS
December 3, 2010 to the present

<u>Type of Violation</u>	<u>Quarter</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
Failure to Prepare and Implement a SWPPP	n/a	n/a	November 15, 2010	Present
Failure to Submit NOI to be Covered by the Permit	n/a	n/a	November 15, 2010	Present
Failure to Ensure that Discharges Will Not Violate Water Quality Standards	n/a	n/a	November 15, 2010	Present
Failure to Implement Adequate Control Measures	All	TSS	November 15, 2010	Present
Failure to Implement Adequate Control Measures	All	Aluminum	November 15, 2010	Present
Failure to Implement Adequate Control Measures	All	Iron	November 15, 2010	Present
Failure to Implement Adequate Control Measures	All	Lead	November 15, 2010	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2010	All	December 31, 2010	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2010	All	January 31, 2011	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2011	All	March 31, 2011	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2011	All	April 30, 2011	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2011	All	June 30, 2011	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2011	All	July 31, 2011	Present
Failure to Conduct Benchmark Monitoring	July-Sep 2011	All	September 30, 2011	Present
Failure to Report Results of Benchmark Monitoring	July-Sep 2011	All	October 31, 2011	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2011	All	December 31, 2011	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2011	All	January 31, 2012	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2012	All	March 31, 2012	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2012	All	April 30, 2012	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2012	All	June 30, 2012	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2012	All	July 31, 2012	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2012	All	September 30, 2012	Present
Failure to Report Results of Benchmark Monitoring	Jul-Sep 2012	All	October 31, 2012	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2012	All	December 31, 2012	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2012	All	January 31, 2013	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2013	All	March 31, 2013	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2013	All	April 30, 2013	Present

Failure to Conduct Benchmark Monitoring	Apr-Jun 2013	All	June 30, 2013	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2013	All	July 31, 2013	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2013	All	September 30, 2013	Present
Failure to Report Results of Benchmark Monitoring	Jul-Sep 2013	All	October 31, 2013	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2013	All	December 31, 2013	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2013	All	January 31, 2014	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2014	All	March 31, 2014	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2014	All	April 30, 2014	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2014	All	June 30, 2014	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2014	All	July 31, 2014	Present
Failure to Conduct Benchmark Monitoring	Jul-Sep 2014	All	September 30, 2014	Present
Failure to Report Results of Benchmark Monitoring	Jul-Sep 2014	All	October 31, 2014	Present
Failure to Conduct Benchmark Monitoring	Oct-Dec 2014	All	December 31, 2014	Present
Failure to Report Results of Benchmark Monitoring	Oct-Dec 2014	All	January 31, 2015	Present
Failure to Conduct Benchmark Monitoring	Jan-Mar 2015	All	March 31, 2015	Present
Failure to Report Results of Benchmark Monitoring	Jan-Mar 2015	All	April 30, 2015	Present
Failure to Conduct Benchmark Monitoring	Apr-Jun 2015	All	June 30, 2015	Present
Failure to Report Results of Benchmark Monitoring	Apr-Jun 2015	All	July 31, 2015	Present
Failure to Conduct Comprehensive Site Inspection	n/a	n/a	September 29, 2011	Present
Failure to Conduct Comprehensive Site Inspection	n/a	n/a	September 29, 2012	Present
Failure to Conduct Comprehensive Site Inspection	n/a	n/a	September 29, 2013	Present
Failure to Conduct Comprehensive Site Inspection	n/a	n/a	September 29, 2014	Present
Failure to Submit Annual Report	n/a	n/a	November 13, 2011	Present
Failure to Submit Annual Report	n/a	n/a	November 13, 2012	Present
Failure to Submit Annual Report	n/a	n/a	November 13, 2013	Present
Failure to Submit Annual Report	n/a	n/a	November 13, 2014	Present
Failure to Submit Annual Report	n/a	n/a	January 30, 2016	Present